

REMARKS

The Office Action dated August 23, 2005 has been reviewed and carefully considered. Claims 1-2, 4-7, 9-17, and 21-30 remain pending, the independent claims remaining 1, 12, 14-17, 27, 28, and 30. Reconsideration of the above-identified application, as amended and in view of the following remarks, is respectfully requested.

Applicant respectfully believes the cancellation of Claims 33-36 renders the Office Action's § 112 first and second paragraph rejections moot and requests their withdrawal.

On the merits, the Office Action rejected Claims 1-2, 4-7, 9, 11, 15-17, 21, 22, and 15-31 under 35 U.S.C. 102(e) as being anticipated by Hamalainen et al (U.S. Patent No. 6,477,176, hereinafter "Hamalainen"). The Office Action also rejected Claims 12 and 13 under 35 U.S.C. §103(a) as being unpatentable over Hamalainen. The Office Action also rejected Claim 14 under 35 U.S.C. §103(a) as being unpatentable over Hamalainen in view of Gudmundson (U.S. Patent No. 5,341,397; hereinafter "Gudmundson"). Applicant respectfully traverses the rejections for at least the following reasons:

Hämäläinen fails to recite or suggest the controller also allocating non-real-time packet data to the output data stream when the data rate of the real-time data is less than the full data capacity of the dual mode channel. Rather, Hamalainen recites using DTX to detect and stop the transmission of speech data. According to Hamalainen, once a voice activity detector VAD indicates the end of a speech burst, the terminal enters DTX and either sends a silence description (SID), sends comfort noise, or discontinues transmission to save power. After the

transmitter finishes sending comfort noise or a SID frame, according to Hamalainen, a controller checks whether there are any data frames in a data buffer, and sends them until the VAD informs of a new speech burst (see, e.g., Col. 3, lines 40-67). Speech is given the priority in Hamalainen. However, this is not the same as allocating non-real-time packet data to the output data stream when the data rate of the real-time data is less than the full data capacity of the dual mode channel. Hamalainen does not take data rate of the channel into account at all. Rather, it will continue to transmit speech data as long as speech is detected (see, e.g., Col. 4, line 55 to Col. 5, line 9). According to the other embodiment of Hamalainen, data (as opposed to speech) are sent primarily as stated above, but also in channel resources other than the traffic channel resources (see, e.g., Col. 2, lines 15-23). This means a control channel that is mostly used for transmitting speech (i.e., in GSM systems).

Claims 7, 12, 14-17, and 27 substantially correspond to independent Claim 1 and are believed patentable for at least the same reasons.

Hamalainen fails to recite or suggest a respective frame header in the output data stream indicates that both real-time and non-real-time data reside in the single time slot and which part of each individual time segment has been allocated to the speech data and which part has been allocated to the packet data. Thus Applicant respectfully traverses the rejection of Claims 28 and 30 for at least these reasons and requests their withdrawal.

Claims 2, 4-6, 9-11, 13, and 21-26 depend from one or another of the independent claims discussed above and are believed patentable for at least the same reasons. In addition, Applicant respectfully believes the above amendments and remarks render the § 103 rejections of Claims 12-14 moot and request their withdrawal.

Please charge any fees other than the issue fee to deposit account 14-1270. Please credit any overpayments to the same account.

For all the foregoing reasons, it is respectfully submitted that all the present claims are patentable in view of the cited references. A Notice of Allowance is respectfully requested.

Respectfully submitted,



Aaron Waxler
Registration No. 48,027

Date: March 23, 2006